

ESTATE OF ANGELINE LaBELLE SOLIS

IBIA 80-26

Decided May 29, 1981

Appeal from order by Administrative Law Judge Robert C. Snashall determining value of Yakima trust land.

Remanded with instructions.

1. Indian Lands: Tribal Rights in Allotted Lands--Indian Probate:
Tribal Purchase of Interest in Decedent's Estate

Where record indicates husband, who would otherwise have received trust property of deceased wife located on Yakima Reservation, did not timely receive notice of tribal determination to purchase inherited trust interest and where the notice and the appraisal relied upon by tribe for the valuation set out in the notice did not conform to requirements of Departmental regulation, a hearing on valuation is required although the time during which a demand for hearing should have been made had expired.

APPEARANCES: W.L. Weigand, Jr., Esq., for appellant Lou S. Solis

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On October 27, 1978, Angeline Solis died holding beneficial ownership of trust property located on the Yakima Reservation. She is survived by her father, presumably of Indian blood, 1/ and her husband,

1/ The Administrative Law Judge below failed to enter a finding regarding the degree of Indian blood or tribal affiliation of decedent's father. His Order Determining Heirs merely identifies the father by an

appellant Lou S. Solis, who is not a member of the Yakima Tribe. On October 9, 1979, an order was entered by the Administrative Law Judge determining heirs. Also, on October 9, notice was given to decedent's heirs and to the Yakima Tribe that the estate property appeared to be subject to divestment by the tribe pursuant to the Act of August 9, 1946, 60 Stat. 969, 25 U.S.C.A. § 607 (West 1981), as amended (Purchase Act), which provides:

§ 607. Divestment of inheritance of non-members--Procedure

(a) A person who is not an enrolled member of the Yakima Tribes with one-fourth degree or more blood of such tribes shall not be entitled to receive by devise or inheritance any interest in trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951), if, while the decedent's estate is pending before the Examiner of Inheritance, the Yakima Tribes pay to the Secretary of the Interior, on behalf of such person, the fair market value of such interest as determined by the Secretary of the Interior after appraisal. The interest for which payment is made shall be held by the Secretary in Trust for the Yakima Tribes.

Time of Election

(b) On request of the Yakima Tribes the Examiner of Inheritance shall keep an estate pending for not less than two years from the date of decedent's death.

Interest of surviving spouse

(c) When a person who is prohibited by subsection (a) of this section from acquiring any interest by devise or inheritance is a surviving spouse of the decedent, a life estate in one-half of the interest acquired by the Yakima Tribes shall, on the request of such spouse, be reserved for that spouse and the value of such life estate so reserved shall be reflected in the Secretary's appraisal under subsection (a) of this section. (As amended Dec. 31, 1970, Pub.L. 91-627, § 1, 84 Stat. 1874.)

On December 20, 1979, the Administrative Law Judge gave notice to the parties concerned that finality had attached to his probate order determining heirship. On January 18, 1980, the tribe exercised its statutory option to purchase the entire estate of decedent. The written notice of that election which appears in the record indicates that

fn. 1 (continued)

allotment number (117-1321). In a Notice of Election to purchase interests of decedent's heirs at law, the chairman of the Yakima Tribal Council avers that decedent's father is not an enrolled member of the Yakima Tribes.

appellant was mailed a copy of the notice of intention to purchase. However, appellant denies he received the document. Appellant's attorney, who has represented appellant throughout the proceedings in probate before the Department, was not sent a copy of the notice. The tribal purchase notice incorporates a real estate appraisal dated December 13, 1978, upon which the tribe bases an offer to pay \$87,187.50 to appellant in compensation for his inheritance. The appraisal does not include the estimated value of appellant's life estate in the trust property.

On February 27, 1980, the Administrative Law Judge ordered the tribal purchase offer approved in the amount stated by the tribe in its January 18 notice. On March 6, 1980, appellant demanded a hearing concerning valuation, contending the tribal estimate of value is lower than the fair market value of the trust land, and objected that the appraisal offered was stale and, further, that it failed to conform to standards set by Departmental rules implementing the Purchase Act then in effect. (See 43 CFR 4.304, 43 CFR 4.301(a) (1979) (form and contents of appraisal); and 43 CFR 4.305(a) (1979) (times for demand for hearing).) The regulations formerly appearing at 43 CFR 4.300-4.317 have since been revised. See 43 CFR 4.300-4.308 (1980).

Appellant now seeks review of the Administrative Law Judge's order dated February 27, 1980, determining the value of the trust land which, under the purchase statute, the Yakima Tribe is entitled to acquire in lieu of inheritance by appellant. He points out that he is a 78 year old man who does not read; inferentially, he contends he relied upon his attorney to handle the probate matter for him, and gave notice to the agency that he had done so.

Although the demand for hearing was presented by appellant to the fact-finder below without objection from the tribe, the matter was nonetheless referred to this Board with a memorandum explaining that the existing rules make it technically impossible for the Administrative Law Judge to hold a valuation hearing. Indeed, given the dates of occurrence of the administrative events in this case, the appellant properly was required to appeal the Administrative Law Judge's order. It is noted, however, the timing of the administrative events was almost entirely within the control of the Administrative Law Judge. Concededly, the former regulations were awkward to apply. According to the statement of the case made by the Administrative Law Judge's memo referring this matter on appeal to the Board, the appellant, in order to have made timely demand for hearing on value, should have demanded hearing 2 days before the Administrative Law Judge's valuation order issued. (Appellant was required to demand hearing concerning value within 60 days from final probate decision or within 60 days from order denying rehearing.) Since value is the central issue to be decided, it was not unreasonable for appellant to await the tribal offer, although the effect of that decision in this case was to go beyond the limit set for making demand for hearing. The failure to receive notice of the amount offered by the tribe, coupled with the timing of the Administrative Law Judge's order approving the tribal offer, combined to deprive appellant of an opportunity to be heard.

The tribe was accorded an opportunity to be heard concerning appellant's assertions respecting the tribal purchase notice and the alleged irregularity in the appraisal used to support the purchase offer, but has not responded to appellant's affidavits and brief in support of his appeal. For the purposes of determining this appeal, the statements of fact by appellant are assumed therefore to be correct.

Under the circumstances of this case, since it appears appellant was not given notice as required by Departmental regulation of the tribal decision to purchase in timely fashion so as to permit him to demand a hearing on value, 2/ and where it also appears the notice and the appraisal relied upon by the tribe may not satisfy Departmental requirements, appellant should be permitted to offer proof of the market value of his interest in the inherited land. (See 43 CFR 4.301 (1979); 43 CFR 4.305 (1980).) Taken as a whole, the record indicates circumstances operated to deprive appellant of the hearing on value which Departmental regulations are intended to afford.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order determining value is set aside. The matter is remanded to the Administrative Law Judge who is instructed to hold the value hearing required by Departmental regulation. 3/

The decision is final for the Department.

Franklin D. Arness
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

2/ Appellant, on Mar. 10, 1980, filed a notice of intent to reserve a life estate in the trust lands pursuant to 25 U.S.C. § 607(c). This notice, given more than 30 days after filing of the tribal purchase election, was also late (43 CFR 4.303 (1979)). Since the notice concerns matters to be raised at the value hearing, the Administrative Law Judge should consider the notice to have been timely made.

3/ For purposes of establishing a complete record, the Administrative Law Judge is also requested to confirm the Indian status (blood degree and tribal affiliation, if any) of decedent's surviving father.